



STATE OF ILLINOIS  
**HEALTH FACILITIES AND SERVICES REVIEW BOARD**

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

<b>DOCKET NO:</b> H-08	<b>BOARD MEETING:</b> December 10, 2012	<b>PROJECT NO:</b> 12-055	<b>PROJECT COST:</b> Original: \$3,388,525
<b>FACILITY NAME:</b> Fresenius Medical Care Lockport		<b>CITY:</b> Lockport	
<b>TYPE OF PROJECT:</b> Substantive			<b>HSA:</b> IX

**PROJECT DESCRIPTION:** The applicants (Fresenius Medical Care Holdings, Inc. and Fresenius Medical Care Lockport, LLC, d/b/a Fresenius Medical Care Lockport) are proposing the establishment of a 12-station ESRD facility located in Lockport. The cost of the project is \$3,388,525. **The project completion date is December 31, 2014.**

**State Board Staff Notes the following:**

This project was originally approved as Permit #09-037 on December 1, 2009. **On May 20, 2011 Permit # 09-037 was abandoned.** It was abandoned because the developer of the property failed to proceed with due diligence with the construction of the site. **This project was deferred from the October 30-31, 2012 State Board Meeting.**

## EXECUTIVE SUMMARY

### PROJECT DESCRIPTION:

- The applicants (Fresenius Medical Care Holdings, Inc., and Fresenius Medical Care Lockport, LLC d/b/a Fresenius Medical Care Lockport) are proposing the establishment of a 12-station End Stage Renal Dialysis (ESRD) facility located in 8,000 GSF of leased space in Lockport. The cost of the project is \$3,388,525.
- **The anticipated project completion date is December 31, 2014.**

### WHY THE PROJECT IS BEFORE THE STATE BOARD:

- This project is before the State Board because the project proposes to establish a health care facility as defined by Illinois Health Facilities Planning Act.

### BACKGROUND:

- This project was previously approved by the State Board as Permit #09-037 in December 2009 at a cost of \$2.9 million. It was abandoned in May 2011 because the developer of the property failed to proceed with due diligence with the construction of the site.

### PURPOSE OF THE PROJECT:

- The project seeks to fulfill the commitment made by the applicants at the time of approval of Permit #09-037 to provide ESRD services to the residents of Lockport.
- The applicants state *"the purpose of the project is to provide dialysis services to the residents of Lockport who have been anticipating dialysis service since the approval of Permit #09-037. The applicants abandoned Permit #09-037 because the developer was unable to move forward with due diligence on the construction of the building. This project is proposing an ESRD facility across the street from the abandoned site."*

### NEED FOR THE PROJECT:

- To establish a dialysis service
  1. there must be a calculated need in the IX planning area; HSA IX includes Grundy, Kankakee, Kendall, Will counties
  2. the proposed service must provide service to planning area residents;
  3. there must be a demand for the service in the planning area;
  4. the proposed service must improve access;
  5. the proposed service will not cause an unnecessary duplication of service or maldistribution of service; and,
  6. will not reduce the utilization of other area providers.
- There is a calculated excess of 47 ESRD stations in the HSA-IX planning area by CY 2013.
- The applicants have documented that the 75% of the patients will come from within the HSA-IX planning area and it appears there is sufficient demand i.e. patients to justify the new facility (118 pre ESRD patients).
- There are 9 facilities within 30 minutes of the proposed facility; 6 facilities are not operating at the 80% target occupancy. Of these 9 facilities 3 are new facilities (FMC Joliet, USRC Bolingbrook, and Davita Palos Park) and have yet to reach target

occupancy. Two facilities (Silver Cross-New Lenox and FMC Orland Park) average 78% and can only accommodate 4 additional patients. Sun Health operates 3 shifts a day Monday, Wednesday, Friday and 2 shifts a day Tuesday, Thursday and Saturday. Utilizing this schedule Sun Health will never reach target occupancy.

- There is 1 station per every 7,611 residents within this 30 minute zip code area compared to the state average of 1 station per every 3,347 residents. This information is based upon the 2010 census.
- While there is an excess of 47 stations in this 4 county planning area; it does not appear that the establishment of this facility will create an unnecessary duplication of service or reduce the utilization of other area providers based upon the ratio of stations to population within this service area.

**TABLE ONE**  
**Facilities within 30 minutes or proposed site**

Facility	Ownership	City	Stations	Time	Utilization	Met Utilization
Silver Cross Renal Center	Davita	New Lenox	19	11.5	78.70%	No
Fresenius Medical Care Joliet	FMC	Joliet	16	12.7	2.08%	No
USRC Bolingbrook	USRC	Bolingbrook	13	19.2	0.00%	No
Fresenius Medical Care Orland Park	FMC	Orland Park	18	20.5	76.85%	No
Bolingbrook Dialysis Center	FMC	Bolingbrook	24	23.2	93.75%	Yes
Silver Cross Renal Center West	Davita	Joliet	29	23.3	86.78%	Yes
Sun Health	Sun	Joliet	17	23.8	49.02%	No
Fresenius Medical Care of Plainfield	FMC	Plainfield	16	26.5	83.33%	Yes
Davita Palos Park	Davita	Palos Park	12	26.5	12.5%	No

- Time determined by Independent Travel Time Study
- Utilization from State Board Staff Survey of ESRD facilities September 2012

### **COMPLIANCE ISSUES**

- Neither applicant has outstanding compliance issues with the State Board.

### **PUBLIC HEARING/COMMENTS**

- No public hearing was requested and no letters of opposition have been received by the State Board Staff.
- **Diane H. Seiler-Zigrossi Will County Board - District 7** stated in support *"I would like to let you and the Illinois Health Facilities and Services Review Board know about my support for Fresenius Medical Care's proposed Lockport dialysis treatment center As a member of the Public Health & Safety Committee for the Will County Board, one of my main priorities is to help senior citizens and people with chronic illnesses improve their quality of life. End Stage Renal Disease is a chronic condition that is prevalent in Will County. During the past two years, the number of Will County residents with this disease has increased by 13 percent. There is a need to open an additional treatment center to serve this growing population. Dialysis treatment is especially taxing on patients because of its frequency and duration. Many individuals undergoing dialysis*

*rely on public transportation to go back and forth from their treatment appointments. Fortunately, Fresenius' proposed dialysis treatment center at 1143- 1165 E. 9th Street in Lockport is easily accessible by bus. I believe Fresenius's Lockport clinic would go a long way toward providing comprehensive dialysis treatment close to residents who need it."*

**Larry Walsh Will County Executive stated in support** *"I would like to offer my support for Fresenius Medical Care's proposed dialysis facility at 1143-1165 E. 9th Street in Lockport. As an elected official in Will County since 1970 I have become very familiar with the Lockport area and its needs. In recent years, Lockport's elderly population has grown, resulting in the need for greater access to health care. Patients who undergo dialysis require treatment up to three times a week, for hours at a time. This creates a huge strain, both physically and emotionally, on these individuals, many of whom are elderly. By working with the Senior Services Center of Will County, I've seen the importance of this treatment. Senior citizens also have limited mobility. Many seniors are not able to drive themselves and must rely on public transportation. The proposed location for the Lockport facility is an ideal location that is easily accessible via bus service, particularly for senior citizens. It is imperative to support dialysis patients and do what we can to enhance their quality of life, by having a conveniently located dialysis center. As Will County continues to grow, one of our top priorities must be to expand access to medical services and facilities. I give my full support to Fresenius Medical Care's proposed Lockport dialysis center."*

#### **FINANCIAL AND ECONOMIC FEASIBILITY**

- The entirety of the project will be funded through internal sources (Cash and Securities/Fair Market Value of the Leases and a review of the financial statements indicate sufficient cash is available to fund the project.

#### **CONCLUSIONS:**

The applicants have addressed a total of 16 review criteria and have not met the following:

<b>State Board Standards Not Met</b>	
<b>Criteria</b>	<b>Reasons for Non-Compliance</b>
<b>1110.234 (c) Size of the Project</b>	The facility size is in excess of the State Standard by 147 GSF per station <i>The applicants explain that the additional space is needed for a home dialysis department, and administrative offices.</i>
<b>1110.1430 (b) Planning Area Need</b>	There is an excess of 47 stations in this planning area.



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**STATE AGENCY REPORT**  
**Fresenius Medical Care Lockport**  
**PROJECT #12-055**

Applicants	Fresenius Medical Care Lockport, LLC d/b/a Fresenius Medical Care Lockport, Fresenius Medical Care Holdings, Inc.
Facility Name	Fresenius Medical Care Lockport
Location	Lockport
Application Received	June 14, 2012
Application Deemed Complete	June 14, 2012
Review Period Ended	August 14, 2014
Review Period Extended by the State Agency	No
Public Hearing Requested	No
Applicants' Deferred Project	No
Can Applicants Request Another Deferral?	Yes
Applicants' Modified the Project	No

**I. The Proposed Project**

The applicants are proposing the establishment of a 12-station ESRD facility located in Lockport. The cost of the project is \$3,388,525.

**II. Summary of Findings**

- A. The State Agency finds the proposed project does not appear to be in conformance with the provisions of Part 1110.
- B. The State Agency finds the proposed project appears to be in conformance with the provisions of Part 1120.

**III. General Information**

The applicants are Fresenius Medical Care Lockport, LLC d/b/a Fresenius Medical Care Lockport and Fresenius Medical Care Holdings, Inc. Fresenius Medical Care Holdings, Inc is the parent organization for all the entities. The proposed facility will be located at 1143-1165 E. 9<sup>th</sup> Street in Lockport. Matt Tilton Archer Bank owns the site. Fresenius Medical Care Lockport, LLC d/b/a Fresenius Medical Care Lockport is the operating entity. The proposed facility will be located in the HSA IX ESRD planning area. HSA IX is comprised of the

Illinois Counties of Grundy, Kankakee, Kendall, and Will. There are 16 providers of ESRD services in HSA IX. According to the November 2012 update to the IDPH Inventory of Health Care Facilities (“Inventory”), HSA IX shows a computed excess of 47 ESRD stations.

<b>TABLE TWO</b> <b>Facilities within 30 minutes or proposed site</b>						
Facility		City	Stations	Time	Utilization	Met Utilization
Silver Cross Renal Center	Davita	New Lenox	19	11.5	78.70%	No
Fresenius Medical Care Joliet	FMC	Joliet	16	12.7	2.08%	No
USRC Bolingbrook	USRC	Bolingbrook	13	19.2	0.00%	No
Fresenius Medical Care Orland Park	FMC	Orland Park	18	20.5	76.85%	No
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Davita Palos Park	Davita	Palos Park	12	26.5	12.5%	No
<ul style="list-style-type: none"> <li>• Time determined by Independent Travel Time Study</li> <li>• Utilization from State Board Staff Survey of ESRD facilities September 2012</li> </ul>						

There is no land acquisition cost for this project and projected operating start-up costs deficit is \$57,416. This is a substantive project subject to both a Part 1110 and Part 1120 review. Project obligation will occur after permit issuance. The anticipated project completion date is December 31, 2014.

#### **IV. The Proposed Project - Details**

The applicants propose to establish a 12 station ESRD facility housed in 8,000 Gross Square Feet (“GSF”) of leased space in Lockport. The total estimated project cost is \$3,388,525.

#### **V. Project Costs and Sources of Funds**

The total estimated project cost is \$3,388,525. The proposed project is being funded with cash and securities of \$1,676,000 and a lease with a Fair Market Value of \$1,712,525. Table Three outlines the project’s costs and uses of funds.

<b>TABLE THREE</b> <b>Project Uses and Sources of Funds</b>	
<b>Uses of Funds</b>	<b>Clinical</b>
Modernization Contracts	\$1,140,000
Contingencies	\$115,000
A & E Fees	\$125,000
Moveable Equipment	\$296,000
Fair Market Value of Leased Space	\$1,712,525
<b>Total Uses of Funds</b>	<b>\$3,388,525</b>
<b>Sources of Funds</b>	<b>Clinical</b>
Cash and Securities	\$1,676,000
Leases (fair market value)	\$1,712,525
<b>Total Sources of Funds</b>	<b>\$3,388,525</b>

## VI. Cost/Space Requirements

Table Four displays the project's cost/space requirements for the project. The clinical portion comprises approximately 100% of the cost and GSF.

<b>TABLE FOUR</b> <b>Aurora Dialysis Center Cost/Space Allocation</b>							
<b>Clinical Department</b>	<b>Cost</b>	<b>Existing GSF</b>	<b>Proposed GSF</b>	<b>New</b>	<b>Modernized</b>	<b>Vacated</b>	<b>As Is</b>
ESRD	\$3,388,525	0	8,000	0	8,000	0	0
<b>Total</b>	<b>\$3,388,525</b>	<b>0</b>	<b>8,000</b>	<b>0</b>	<b>8,000</b>	<b>0</b>	<b>0</b>

## VII. Safety Net Information

The establishment of the Fresenius Medical Care Lockport dialysis facility will not have any impact on safety net services in the community. Outpatient dialysis services are not typically considered "safety net" services, to the best of our knowledge. However, we do provide care for patients in the community who are economically challenged and/or who are undocumented aliens, who do not qualify for Medicare/Medicaid. We assist patients who do not have insurance in enrolling when possible in Medicaid and/or Medicaid as applicable, and also our social services department assists patients who have issues regarding transportation and/or who are wheel chair bound or have other disabilities which require assistance with respect to dialysis services and transport to and from the unit.

This particular application will not have an impact on any other safety net provider in the area, as no hospital within the area provides dialysis services on an outpatient basis.

Fresenius Medical Care is a for-profit publicly traded company and is not required to provide charity care, nor does it do so according to the Board's definition. However, Fresenius provides care to all patients regardless of their ability to pay. There are a number of patients treated by Fresenius who either do not qualify for or will not seek any type of coverage for dialysis services. These patients are considered "self-pay" patients. These patients are invoiced as all patients are invoiced, however payment is not expected and Fresenius does not initiate any collections activity on these accounts. These unpaid invoices are written off as bad debt. Fresenius notes that as a for profit entity, it does pay sales, real estate and income taxes. It also does provide community benefit by supporting various medical education activities and associations, such as the Renal Network and National Kidney Foundation.

The table below shows the amount of "self-pay" care provided for the 3 fiscal years prior to submission of the application for **all Fresenius Medical Care facilities in Illinois** and the amount of care provided to Medicaid patients for the three fiscal years prior to submission of the application for **all Fresenius Medical Care facilities in Illinois**. This includes in-center hemodialysis, peritoneal dialysis, home hemodialysis & sub-acute hemodialysis.

<b>TABLE FIVE</b> <b>Safety Net Information</b> <b>Fresenius Medical Care Facilities in Illinois</b>			
<b>NET REVENUE</b>	<b>\$364,295,636</b>	<b>\$397,467,778</b>	<b>\$353,355,908</b>
<b>CHARITY CARE</b>			
	<b>2009</b>	<b>2010</b>	<b>2011</b>
Charity Care (# of self-pay patients)	260	146	93
Charity (self-pay) Cost	\$3,642,751	\$1,307,966	\$632,154
% of Charity Care to Net Rev.	1.00%	0.33%	0.20%
<b>MEDICAID</b>			



<b>TABLE FIVE</b> <b>Safety Net Information</b> <b>Fresenius Medical Care Facilities in Illinois</b>			
	2009	2010	2011
Medicaid (# of patients)	1,783	1,828	1865
Medicaid (revenue)	\$40,401,403	\$44,001,539	\$42,367,328
% of Medicaid to Net Revenue	11.90%	11.07%	12%

### VIII. Section 1110.230 - Project Purpose, Background and Alternatives

#### A. Criterion 1110.230(a) - Background of Applicant

The Criterion states:

- "1) An applicant must demonstrate that it is fit, willing and able, and has the qualifications, background and character, to adequately provide a proper standard of health care service for the community. [20 ILCS 3960/6] In evaluating the qualifications, background and character of the applicant, HFPB shall consider whether adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application. A health care facility is considered "owned or operated" by every person or entity that owns, directly or indirectly, an ownership interest. If any person or entity owns any option to acquire stock, the stock shall be considered to be owned by such person or entity (refer to 77 Ill. Adm. Code 1100 and 1130 for definitions of terms such as "adverse action", "ownership interest" and "principal shareholder").**

The applicant provided a list of all health care facilities currently owned and/or operated by the applicant, including licensing, certification and accreditation identification numbers, a certified listing from the applicant of any adverse action taken against any facility owned and/or operated by the applicant during the three years prior to the filing of the application, and authorization permitting IHFSRB and Illinois Department of Public Health (IDPH) access to any documents necessary to verify the information submitted.

#### B. Criterion 1110.230(b) - Purpose of the Project

The Criterion states:

The applicant shall document that the project will provide health services that improve the health care or well-being of the market area population to be served. The applicant shall define the planning area or market area, or other, per the applicant's definition.

- 1) The applicant shall address the purpose of the project, i.e., identify the issues or problems that the project is proposing to address or solve. Information to be provided shall include, but is not limited to, identification of existing problems or issues that need to be addressed, as applicable and appropriate for the project. Examples of such information include:
  - A) The area's demographics or characteristics (e.g., rapid area growth rate, increased aging population, higher or lower fertility rates) that may affect the need for services in the future;
  - B) The population's morbidity or mortality rates;
  - C) The incidence of various diseases in the area;
  - D) The population's financial ability to access health care (e.g., financial hardship, increased number of charity care patients, changes in the area population's insurance or managed care status);
  - E) The physical accessibility to necessary health care (e.g., new highways, other changes in roadways, changes in bus/train routes or changes in housing developments).
- 2) The applicant shall cite the source of the information (e.g., local health department Illinois Project for Local Assessment of Need (IPLAN) documents, Public Health Futures, local mental health plans, or other health assessment studies from governmental or academic and/or other independent sources).
- 3) The applicant shall detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being. Further, the applicant shall provide goals with quantified and measurable objectives with specific time frames that relate to achieving the stated goals.
- 4) For projects involving modernization, the applicant shall describe the conditions being upgraded. For facility projects, the applicant shall include statements of age and condition and any regulatory citations. For equipment being replaced, the applicant shall also include repair and maintenance records.

The applicants propose to establish a 12-station ESRD facility and

modernize 8,000 gross square feet of leased space. The applicants state *the purpose of the project is to provide dialysis services to the residents of Lockport who have been anticipating dialysis service since the approval of Permit #09-037. The applicants abandoned Permit #09-037 because the developer was unable to move forward with due diligence on the construction of the building. This project is proposing an ESRD facility across the street from the abandoned site.*

The applicants cited quantifiable goals as being the ability to improve access while monitoring patient demand, and that the facility will achieve quality outcomes as demonstrated by achieving 94% of patients having a URR greater than or equal to 65%, and 96% of patients having a Kt/V greater than or equal to 1.2.

**C. Criterion 1110.230(c) - Alternatives to the Proposed Project**

**The Criterion states:**

**“The applicant shall document that the proposed project is the most effective or least costly alternative for meeting the health care needs of the population to be served by the project.**

- 1) Alternative options shall be addressed. Examples of alternative options include:**
  - A) Proposing a project of greater or lesser scope and cost;**
  - B) Pursuing a joint venture or similar arrangement with one or more providers or entities to meet all or a portion of the project's intended purposes; developing alternative settings to meet all or a portion of the project's intended purposes;**
  - C) Utilizing other health care resources that are available to serve all or a portion of the population proposed to be served by the project; and**
  - D) Other considerations.**
- 2) Documentation shall consist of a comparison of the project to alternative options. The comparison shall address issues of cost, patient access, quality and financial benefits in both the short term (within one to three years after project completion) and long term. This may vary by project or situation.**
- 3) The applicant shall provide empirical evidence, including quantified outcome data, that verifies improved quality of care, as available.”**

The applicants propose a 12-station ESRD facility. The applicants considered the following alternatives:

### **1. Pursuing a project of lesser scope**

The applicants state the alternative of pursuing a project of lesser scope was never a viable alternative since the only option would have been doing nothing. Doing nothing would not have addressed the need for dialysis service in the Lockport area. The applicants state that there is no monetary cost associated with this alternative while the cost is the welfare of the patients due to limited access to care.

### **2. Pursuing a joint venture**

The applicants rejected this alternative because Fresenius Medical Care has the financial wherewithal and other resources to provide dialysis services without pursuing a joint venture. The cost of this alternative is \$2,033,115.

### **3. Using Other ESRD facilities**

The option of sending pre ESRD patients to underutilized facilities within this market area is not a reasonable option because the Village of Lockport is not easily accessible. The applicants note that the proposed project is the most effective option, planning for future growth now affords lower rent options, provides employment, and cost savings to patients. The applicants' further note that while the cost of the project is higher than doing nothing, the cost is an issue only to Fresenius Medical Care. There is no increase in healthcare costs to the patients since Medicare covers all dialysis patients and is a needed service that a patient cannot seek unless medically necessary.

## **IX. Section 1110.234 - Project Scope and Size, Utilization and Unfinished/Shell Space - Review Criteria**

### **A) Size of Project**

The Criterion states:

"The applicant shall document that the amount of physical space proposed for the project is necessary and not excessive. The proposed gross square footage (GSF) cannot exceed the GSF standards of Appendix B, unless the additional GSF can be justified by documenting one of the following:

- 1) Additional space is needed due to the scope of services provided,

justified by clinical or operational needs, as supported by published data or studies;

- 2) The existing facility's physical configuration has constraints or impediments and requires an architectural design that results in a size exceeding the standards of Appendix B;
- 3) The project involves the conversion of existing bed space that results in excess square footage."

The applicants propose to establish a 12 station ESRD facility in 8,000 GSF of leased space. The State board standard is 360-520 GSF per station. Therefore there is 666 GSF per station, which exceeds the standard. The applicants explain that additional space is needed for home dialysis training and office space.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE SIZE OF PROJECT CRITERION (77 IAC 1110.234(a)).**

**B) Criterion 1110.234 - Project Utilization**

The applicant shall document that, by the end of the second year of operation, the annual utilization of the clinical service areas or equipment shall meet or exceed the utilization standards specified in Appendix B. The number of years projected shall not exceed the number of historical years documented. If the applicant does not meet the utilization standards in Appendix B, or if service areas do not have utilization standards in 77 Ill. Adm. Code 1100, the applicant shall justify its own utilization standard by providing published data or studies, as applicable and available from a recognized source, that minimally include the following:

- 1) Clinical encounter times for anticipated procedures in key rooms (for example, procedure room, examination room, imaging room);
- 2) Preparation and clean-up times, as appropriate;
- 3) Operational availability (days/year and hours/day, for example 250 days/year and 8 hours/day); and
- 4) Other operational factors.

The applicants (Dr. Hamburger) have identified 118 pre ESRD patients that will need dialysis within two years after project completion. If the

number of patients materializes as projected the applicants will be at the required target occupancy.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT DOES APPEAR TO BE IN CONFORMANCE WITH THE PROJECT UTILIZATION CRITERION (77 IAC 1110.234(b)).**

**X. Section 1110.1430 - In-Center Hemodialysis Projects – Review Criteria**

**The criterion for establishing an ESRD facility reads as follows:**

- 1) 77 Ill. Adm. Code 1100 (formula calculation)**
  - A) The number of stations to be established for in-center hemodialysis is in conformance with the projected station deficit specified in 77 Ill. Adm. Code 1100, as reflected in the latest updates to the Inventory.**
  - B) The number of stations proposed shall not exceed the number of the projected deficit, to meet the health care needs of the population served, in compliance with the utilization standard specified in 77 Ill. Adm. Code 1100.**
- 2) Service to Planning Area Residents**
  - A) Applicants proposing to establish or add stations shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable), for each category of service included in the project.**
  - B) Applicants proposing to add stations to an existing in-center hemodialysis service shall provide patient origin information for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the area. For all other projects, applicants shall document that at least 50% of the projected patient volume will be from residents of the area.**
  - C) Applicants proposing to expand an existing in-center hemodialysis service shall submit patient origin**

information by zip code, based upon the patient's legal residence (other than a health care facility).

**3) Service Demand - Establishment of In-Center Hemodialysis Service**

The number of stations proposed to establish a new in-center hemodialysis service is necessary to accommodate the service demand experienced annually by the existing applicant facility over the latest two-year period, as evidenced by historical and projected referrals, or, if the applicant proposes to establish a new facility, the applicant shall submit projected referrals. The applicant shall document subsection (b)(3)(A) and either subsection (b)(3)(B) or (C).

**A) Historical Referrals**

- i) If the applicant is an existing facility, the applicant shall document the number of referrals to other facilities, for each proposed category of service, for each of the latest two years.
- ii) Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; name and location of the recipient facility.

**B) Projected Referrals**

The applicant shall provide physician referral letters that attest to:

- i) The physician's total number of patients (by facility and zip code of residence) who have received care at existing facilities located in the area, as reported to The Renal Network at the end of the year for the most recent three years and the end of the most recent quarter;
- ii) The number of new patients (by facility and zip code of residence) located in the area, as reported to The Renal Network, that the physician referred for in-center hemodialysis for the most recent year;

- iii) An estimated number of patients (transfers from existing facilities and pre-ESRD, as well as respective zip codes of residence) that the physician will refer annually to the applicant's facility within a 24-month period after project completion, based upon the physician's practice experience. The anticipated number of referrals cannot exceed the physician's documented historical caseload;
- iv) An estimated number of existing patients who are not expected to continue requiring in-center hemodialysis services due to a change in health status (e.g., the patients received kidney transplants or expired);
- v) The physician's notarized signature, the typed or printed name of the physician, the physician's office address and the physician's specialty;
- vi) Verification by the physician that the patient referrals have not been used to support another pending or approved CON application for the subject services; and
- vii) Each referral letter shall contain a statement attesting that the information submitted is true and correct, to the best of the physician's belief.

5) **Service Accessibility**

The number of stations being established or added for the subject category of service is necessary to improve access for planning area residents. The applicant shall document the following:

A) **Service Restrictions**

The applicant shall document that at least one of the following factors exists in the planning area:

- i) The absence of the proposed service within the planning area;
- ii) Access limitations due to payor status of patients, including, but not limited to, individuals with



health care coverage through Medicare, Medicaid, managed care or charity care;

- iii) Restrictive admission policies of existing providers;
- iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area, or a Medically Underserved Population;
- v) For purposes of this subsection (b)(5) only, all services within the 30-minute normal travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.

**b) Planning Area Need – Review Criterion**

The applicant shall document that the number of stations to be established or added is necessary to serve the planning area's population, based on the following:

**1) 77 Ill. Adm. Code 1100 (formula calculation)**

According to the November 2012 update to the IDPH Inventory of Health Care Facilities ("Inventory"), HSA IX shows a computed excess of 47 ESRD stations.

**2) Service to Planning Area Residents**

The facility will be located on the northeast area of HSA IX and the border of HSA VII; therefore the applicants have identified 88 patients that will come from within HSA IX and 30 patients that will come from HSA VII.

**3) Service Demand**

The applicants submitted a referral letter from Dr. Hamburger (Southwest Nephrology Associates, S.C.) that met all of the requirements of the State Board. The physician identified 118 pre ESRD patients by zip code that

could require ESRD services within 24 months of the completion of the project. Of the 118 patients approximately 83 pre ESRD patients will utilize the proposed facility. Approximately 30% of the pre ESRD patients will utilize home dialysis or will be deceased by the second year after project completion.

**4) Service Accessibility**

There is no absence of service in the planning area, or access limitation due to payor status, nor does the area population or existing care system exhibit indicators of medical care problems, or restrictive admission policies at existing care providers in the planning area. There are existing providers within 30 minutes of the proposed facility that are not currently operating at the target occupancy.

**THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE PLANNING AREA NEED CRITERION (77 IAC 1110.1430(b)).**

**C) Unnecessary Duplication/Maldistribution**

- 1) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information:**
  - A) A list of all zip code areas that are located, in total or in part, within 30 minutes normal travel time of the project's site;**
  - B) The total population of the identified zip code areas (based upon the most recent population numbers available for the State of Illinois population); and**
  - C) The names and locations of all existing or approved health care facilities located within 30 minutes normal travel time from the project site that provide the categories of station service that are proposed by the project.**
- 2) The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the identified area (within the planning area) has an excess supply of facilities, stations and services characterized by such factors as, but not limited to:**

- A) A ratio of stations to population that exceeds one and one-half times the State average;
  - B) Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and services that is below the utilization standard established pursuant to 77 Ill. Adm. Code 1100; or
  - C) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above utilization standards.
- 3) The applicant shall document that, within 24 months after project completion, the proposed project:
- A) Will not lower the utilization of other area providers below the occupancy standards specified in 77 Ill. Adm. Code 1100; and
  - B) Will not lower, to a further extent, the utilization of other area hospitals that are currently (during the latest 12-month period) operating below the occupancy standards.

**1. Unnecessary Duplication/ Mal-distribution of Services**

The applicant provided a list of all zip code areas that are located within 30 minutes of the proposed site as required. According to the applicant, there is a total population of 1,033,065 within 30 minutes of the proposed facility based upon the 2010 census. Based upon the 2010 census there is 1 station per every 7,611 residents compared to the state average of 1 station per every 3,347 residents. The applicants' states there will not mal-distribution of service because the ratio of stations to population within 30 minutes travel time exceeds the State ratio by twice as much. The applicants also state there will be no adverse impact on any other area providers due to the patients identified for this facility are new patients. No patients will be transferred from any other facility.

Six of the nine facilities within 30 minutes of the proposed site are operating below the target occupancy of 80%. It appears the establishment of this facility may cause an unnecessary duplication of service.

**THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES NOT**

**APPEAR TO BE IN CONFORMANCE WITH THE SERVICE DEMAND  
CRITERION (77 IAC 1110.1430 (b)(4)).**

**D) Staffing - Availability**

**The Criterion states:**

**“The applicant shall document that relevant clinical and professional staffing needs for the proposed project were considered and that licensure and JCAHO staffing requirements can be met. In addition, the applicant shall document that necessary staffing is available by providing letters of interest from prospective staff members, completed applications for employment, or a narrative explanation of how the proposed staffing will be achieved.**

**1) Qualifications**

- A) Medical Director - Medical direction of the facility shall be vested in a physician who has completed a board-approved training program in nephrology and has at least 12 months experience providing care to patients receiving dialysis.**
- B) Registered Nurse - The nurse responsible for nursing services in the unit shall be a registered nurse (RN) who meets the practice requirements of the State of Illinois and has at least 12 months experience in providing nursing care to patients on maintenance dialysis.**
- C) Dialysis Technician - This individual shall meet all applicable State of Illinois requirements (see 210 ILCS 62, the End Stage Renal Disease Facility Act). In addition, the applicant shall document its requirements for training and continuing education.**
- D) Dietitian - This individual shall be a registered dietitian with the Commission on Dietetic Registration, meet the practice requirements of the State of Illinois (see the Dietetic and Nutrition Services Practice Act [225 ILCS 30]) and have a minimum of one year of professional work experience in clinical nutrition as a registered dietitian.**
- E) Social Worker - The individual responsible for social services shall have a Master's of Social Work and meet the State of Illinois requirements (see 225 ILCS 20, the Clinical Social Work and Social Work Practice Act).”**

The applicants are proposing to establish a 12-station ESRD facility and have provided the necessary information as required by this criterion at

pages 64-68 of the application for permit.

**THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE STAFFING CRITERION (77 IAC 1110.1430 (e)(1)).**

**E) Support Services**

**The Criteria states:**

**“An applicant proposing to establish an in-center hemodialysis category of service must submit a certification from an authorized representative that attests to each of the following:**

- 1) Participation in a dialysis data system;**
- 2) Availability of support services consisting of clinical laboratory service, blood bank, nutrition, rehabilitation, psychiatric and social services; and**
- 3) Provision of training for self-care dialysis, self-care instruction, home and home-assisted dialysis, and home training provided at the proposed facility; or the existence of a signed, written agreement for provision of these services with another facility.”**

The applicants are proposing to establish a 12-station ESRD facility and have provided the necessary documentation as required by this criterion at page 70 of the application for permit.

**THE STATE AGENCY FINDS PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH SUPPORT SERVICES (77 IAC 1110.1430 (D))**

**F) Minimum Number of Stations**

**The minimum number of in-center hemodialysis stations for an End Stage Renal Disease (ESRD) facility is:**

- 1) Four dialysis stations for facilities outside an MSA;**
- 2) Eight dialysis stations for a facility within an MSA.**

The proposed 12 station ESRD facility will be located in an MSA. The applicants have met the requirements of this criterion

**THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE MINIMUM NUMBER OF**

**STATIONS CRITERION (77 IAC 1110.1430 (g)).**

**G) Continuity of Care**

**An applicant proposing to establish an in-center hemodialysis category of service shall document that a signed, written affiliation agreement or arrangement is in effect for the provision of inpatient care and other hospital services. Documentation shall consist of copies of all such agreements.**

The applicants have provided the required affiliation agreement at page 72 of the application for permit. The transfer agreement is with Saint Joseph Medical Center in Joliet. The applicants have met the requirements of this criterion.

**THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE CONTINUITY OF CARE CRITERION (77 IAC 1110.1430 (h)).**

**H) Assurances**

**The Criterion states:**

**"The applicant representative who signs the CON application shall submit a signed and dated statement attesting to the applicant's understanding that:**

- 1) By the second year of operation after the project completion, the applicant will achieve and maintain the utilization standards specified in 77 Ill. Adm. Code 1100 for each category of service involved in the proposal; and**
- 2) An applicant proposing to expand or relocate in-center hemodialysis stations will achieve and maintain compliance with the following adequacy of hemodialysis outcome measures for the latest 12-month period for which data are available:  
≥ 85% of hemodialysis patient population achieves area reduction ratio (URR) ≥ 65% and ≥ 85% of hemodialysis patient population achieves Kt/V Daugirdas II .1.2."**

The applicants provided the certification information at pages 73 of the application for permit as required of the criterion.

**THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ASSURANCES CRITERION (77 IAC 1110.1430 (j)).**

**XI. 1120.120 - Availability of Funds**

The applicant shall document that financial resources shall be available and be equal to or exceed the estimated total project cost plus any related project costs by providing evidence of sufficient financial resources from the following sources, as applicable:

- a) Cash and Securities – statements (e.g., audited financial statements, letters from financial institutions, board resolutions) as to:
  - 1) the amount of cash and securities available for the project, including the identification of any security, its value and availability of such funds; and
  - 2) interest to be earned on depreciation account funds or to be earned on any asset from the date of applicant's submission through project completion;
- b) Pledges – for anticipated pledges, a summary of the anticipated pledges showing anticipated receipts and discounted value, estimated time table of gross receipts and related fundraising expenses, and a discussion of past fundraising experience. Provide a list of confirmed pledges from major donors (over \$100,000);
- c) Gifts and Bequests – verification of the dollar amount, identification of any conditions of use, and the estimated time table of receipts;
- d) Debt – a statement of the estimated terms and conditions (including the debt time period, variable or permanent interest rates over the debt time period, and the anticipated repayment schedule) for any interim and for the permanent financing proposed to fund the project, including:
  - 1) For general obligation bonds, proof of passage of the required referendum or evidence that the governmental unit has the authority to issue the bonds and evidence of the dollar amount of the issue, including any discounting anticipated;
  - 2) For revenue bonds, proof of the feasibility of securing the specified amount and interest rate;
  - 3) For mortgages, a letter from the prospective lender attesting to the expectation of making the loan in the amount and time indicated, including the anticipated interest rate and any

conditions associated with the mortgage, such as, but not limited to, adjustable interest rates, balloon payments, etc.;

- 4) For any lease, a copy of the lease, including all the terms and conditions, including any purchase options, any capital improvements to the property and provision of capital equipment;
- e) Governmental Appropriations – a copy of the appropriation Act or ordinance accompanied by a statement of funding availability from an official of the governmental unit. If funds are to be made available from subsequent fiscal years, a copy of a resolution or other action of the governmental unit attesting to this intent;
- f) Grants – a letter from the granting agency as to the availability of funds in terms of the amount and time of receipt;
- g) All Other Funds and Sources – verification of the amount and type of any other funds that will be used for the project.

The applicants are funding the project with cash and securities of \$1,676,000 and the FMV of the lease of \$1,712,525. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE AVAILABILITY OF FUNDS CRITERION (77 IAC 1120.120 (a)).**

## **XII. 1120.130 - Financial Feasibility**

### **Financial Viability Waiver**

The applicant is NOT required to submit financial viability ratios if:

- 1) all project capital expenditures, including capital expended through a lease, are completely funded through internal resources (cash, securities or received pledges); or

**HFSRB NOTE: Documentation of internal resources availability shall be available as of the date the application is deemed complete.**



- 2) the applicant's current debt financing or projected debt financing is insured or anticipated to be insured by Municipal Bond Insurance Association Inc. (MBIA), or its equivalent; or

HFSRB NOTE: MBIA Inc is a holding company whose subsidiaries provide financial guarantee insurance for municipal bonds and structured financial projects. MBIA coverage is used to promote credit enhancement as MBIA would pay the debt (both principal and interest) in case of the bond issuer's default.

- 3) the applicant provides a third-party surety bond or performance bond letter of credit from an A rated guarantor (insurance company, bank or investing firm) guaranteeing project completion within the approved financial and project criteria.

b) **Viability Ratios**

The applicant or co-applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which audited financial statements are available and for the first full fiscal year at target utilization, but no more than two years following project completion. When the applicant's facility does not have facility specific financial statements and the facility is a member of a health care system that has combined or consolidated financial statements, the system's viability ratios shall be provided. If the health care system includes one or more hospitals, the system's viability ratios shall be evaluated for conformance with the applicable hospital standards. The latest three years' audited financial statements shall consist of:

- 1) Balance sheet;
- 2) Revenues and expenses statement;
- 3) Changes in fund balance; and
- 4) Changes in financial position.

HFSRB NOTE: To develop the above ratios, facilities shall use and submit audited financial statements. If audited financial statements are not available, the applicant shall use and submit Federal Internal Revenue Service tax returns or the Federal Internal Revenue Service 990 report with accompanying schedules. If the project involves the establishment of a new facility and/or the applicant is a new entity,

supporting schedules to support the numbers shall be provided documenting how the numbers have been compiled or projected.

c) **Variance**

**Applicants not in compliance with any of the viability ratios shall document that another organization, public or private, shall assume the legal responsibility to meet the debt obligations should the applicant default.**

The applicants are funding the project with cash and securities of \$1,676,000 and the FMV of the lease of \$1,712,525. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project.

Table Five outlines Fresenius Medical Care credit rating from all three credit rating agencies. These credit ratings are **opinions** of the three rating agencies on the ability of a corporation to meet its financial obligation on time and in full.

TABLE SIX Fresenius Credit Rating			
	Standard & Poor's	Moody's	Fitch
Corporate Credit Rating	BB	Ba1	BB
Outlook	positive	stable	positive
BB—Less vulnerable in the near-term but faces major ongoing uncertainties to adverse business, financial and economic conditions. Ba1-Speculative investment. Occurs often in deteriorated circumstances, usually problematic to predict future development 'BB'- ratings indicate an elevated vulnerability to default risk, particularly in the event of adverse changes in business or economic conditions over time; however, business or financial flexibility exists which supports the servicing of financial commitments			

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE FINANCIAL FEASIBILITY CRITERION (77 IAC 1120.130 (a)).**

**XIII. Section 1120.140 - Economic Feasibility**

**A. Criterion 1120.140(a) - Reasonableness of Financing Arrangements**

The applicant shall document the reasonableness of financing arrangements by submitting a notarized statement signed by an authorized representative that attests to one of the following:

1) That the total estimated project costs and related costs will be funded in total with cash and equivalents, including investment securities, unrestricted funds, received pledge receipts and funded depreciation; or

2) That the total estimated project costs and related costs will be funded in total or in part by borrowing because:

A) A portion or all of the cash and equivalents must be retained in the balance sheet asset accounts in order to maintain a current ratio of at least 2.0 times for hospitals and 1.5 times for all other facilities; or

B) Borrowing is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

The applicants are funding the project with cash and securities of \$1,676,000 and the FMV of the lease of \$1,712,525. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project. The applicants have provided the necessary attestation that borrowing (leasing) is less costly than the liquidation of existing investments. The applicants have met the requirements of this criterion.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE REASONABLENESS OF FINANCING ARRANGEMENTS CRITERION (77 IAC 1120.140(a)).**

**B. Criterion 1120.140(b) - Terms of Debt Financing**

This criterion is applicable only to projects that involve debt financing. The applicant shall document that the conditions of debt financing are reasonable by submitting a notarized statement signed by an authorized representative that attests to the following, as applicable:

1) That the selected form of debt financing for the project will be at the lowest net cost available;

2) That the selected form of debt financing will not be at the lowest net cost available, but is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional indebtedness, term (years), financing costs and other factors;

3) That the project involves (in total or in part) the leasing of equipment or facilities and that the expenses incurred with leasing a facility or equipment are less costly than constructing a new facility or purchasing new equipment.

The applicants are funding the project with cash and securities of \$1,676,000 and the FMV of the lease of \$1,712,525. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project. The applicants have attested that the selected form of debt financing (leasing) will be at the lower net cost available to the applicants. The applicants have met the requirements of this criterion.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE TERMS OF DEBT FINANCING CRITERION (77 IAC 1120.140(b)).**

**C. Criterion 1120.140(c) - Reasonableness of Project Cost**

**The applicant shall document that the estimated project costs are reasonable and shall document compliance with the State Board's standards as detailed in 77 IAC 1120.**

**Modernization Contracts (\$1,140,000) and Contingencies (\$115,000)** - These costs total \$1,255,000 or \$156.87 per gross square feet. ( $\$1,182,075 / 7,500 \text{ GSF} = \$157.61 / \text{GSF}$ ) This appears reasonable when compared to the State Board standard of \$183.68/GSF.

**Contingencies** - These costs total \$115,000. These costs are 10.08% of modernization costs. This appears reasonable when compared to the State Board standard of 10%-15% of modernization costs.

**Architect and Engineering Fees** - These costs total \$125,000 or 9.9% of modernization and contingency costs. This appears reasonable when compared to the State Board standard of 6.90% -10.36% of modernization and contingency costs.

**Moveable Equipment** - These costs total \$296,000 or \$24,666 per station. This appears reasonable when compared to the State Board standard of \$39,945.

**Fair Market Value of Leased Space** - These costs are \$1,712,525. The State Board does not have a standard for these costs.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE REASONABLENESS OF PROJECT COST CRITERION (77 IAC 1120.140 (c)).**

**D) Criterion 1120.140 (d) - Projected Operating Costs**

**The applicant shall provide the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct cost means the fully allocated costs of salaries, benefits and supplies for the service.**

The applicants anticipate the direct operating costs per treatment to be \$93.00. The State Board does not have a standard for these costs.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE PROJECT DIRECT OPERATING COSTS CRITERION (77 IAC 1120.140 (d)).**

**E) Criterion 1120.140 (e) - Total Effect of the Project on Capital Costs**

**The applicant shall provide the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.**

The applicants anticipate the total effect of the Project on Capital Costs per treatment to be \$8.79. The State Board does not have a standard for these costs.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE TOTAL EFFECT OF THE PROJECT ON CAPITAL COSTS CRITERION (77 IAC 1120.140 (e)).**



## 12-055 Fresenius Medical Care Lockport - Lockport

